



U.S Department
Of Transportation

Federal Aviation
Administration

Western-Pacific Region
Airports Division

Federal Aviation Administration
P.O. Box 92007
Los Angeles, CA 90009-2007

November 14, 2003

Mr. Peter Drinkwater
Director, County Airports
Department of Public Works
County of San Diego
5555 Overland Avenue
San Diego, CA 92123-1295

Dear Mr. Drinkwater:

Gillespie Field (SEE) Compliance Advisory

We wish to acknowledge your assistance during the SEE site visit on August 6, 2003, to observe airport facilities and discuss airport management practices. We appreciate the time you spent with our staff, the information you provided, and your willingness to listen to Federal Aviation Administration's (FAA's) perspective on important airport matters.

Subsequent to their visit, staff reviewed several airport lease agreements and informally provided you with feedback regarding their assessment of those leases. Based on their visit and lease reviews, this letter is intended to communicate the FAA's position regarding San Diego County's airport management practices at Gillespie Field (SEE).

Airport sponsors of federally assisted airports have a contractual obligation and a public trust to manage and operate their airports in the best interest of civil aviation. To fulfill these responsibilities, sponsors should adopt and enforce adequate rules, regulations, or ordinances to ensure the safe and efficient operation of the airport for aeronautical use, on terms that make the airport as self-sustaining as possible.

Over a period of several years, FAA have provided guidance on surplus property and grant compliance matters to San Diego County (County) officials, regarding certain airport management practices. Airport matters previously discussed, addressed the 70-acre racetrack parcel, residential hangars development, the use of aircraft hangars for non-aeronautical activities, fee and rental rates, the Airport Layout Plan (ALP), and the County's leasing policies and practices.

This letter reiterates our position with regard to these matters and again instructs the County to take appropriate action to modify those practices that may impede the County from fully conforming to federal obligations. The issues that concern FAA most are summarized under each topic heading below:

A. Cajon Plaza Parcel (Racetrack Parcel)

Presently, the County is preparing the ALP update and report that should identify the types of airport development that will be needed to satisfy the aviation forecast at SEE. It would be appropriate to reserve the Cajon Plaza parcel for aeronautical purposes, since it represents the highest, best and exclusive use of obligated airport land needed to accommodate aeronautical demand that presently exists within the county area. If airport land is needed for aeronautical purposes, the FAA is not authorized by law to release such federally obligated airport land for a non-aeronautical use.

B. Residential Use of Hangars

Allowing airport hangars that incorporate permanent living quarters conflicts with several grant assurance requirements. Per Grant Assurance #5, *Preservation of Rights and Powers*, a sponsor should not take any action that may deprive it of its rights and powers so it can direct and control airport development in compliance with grant assurances.

Airport standards, rules and regulations should prevent the introduction of non-aeronautical land uses, such as living quarters and other non-aeronautical activities on federally obligated airport land. The airport sponsor should have rules and regulations to control or prevent airport uses that may create hazards or safety risks between airport operations and tenant activities that are unrelated to aviation.

In accordance with Grant Assurance #19, *Operation and Maintenance*, airport sponsors will not cause or permit any activity or action that would interfere with the airport's use for airport purposes. Permanent living facilities should not be permitted at public airports because the needs of airport operations are incompatible with the quality-of-life needs of residential occupants. Residential tenants may complain about aircraft noise and seek limitations on aircraft and/or airport operations. Tenants occupying residential hangars, or their guests, may cause vehicle or pedestrian deviation; unsupervised children could be harmed; and unleashed pets roaming the airfield may present a hazard to aircraft operations.

The requirements of Grant Assurance #21, *Compatible Land Use*, are applicable to on-airport residential hangars, just as they are to off-airport residential development. It is inevitable that residential development in the vicinity of airports will result in complaints from residents concerning personal safety, aircraft noise, pollution, and other quality-of-life issues. In all likelihood, a similar reaction may surface from individuals living at the airport.

Aeronautical uses, such as commercial air taxi, charter and medical evacuation services may have a need for flight crew quarters, when these businesses operate 24 hours a day, 7 days a week. A fixed base operator (FBO) may need office space, a client lounge and meeting facilities during the day, but this does not justify nighttime living quarters. Living quarters for caretakers or security personnel are normally unnecessary, because these activities can be performed without residential living quarters.

In our judgment, the existence of living quarters in a hangar encourages airport residency. The best way to avoid airport residency is to prohibit residential hangar units.

It is our opinion that residential quarters may create undesirable consequences such as:

1. Aircraft noise complaints,
2. Avigation easements on airport property,
3. Vehicle and pedestrian deviations,
4. Increased public safety and legal liability risks,
5. Line of sight obstructions and operational limitations, such as the loss of instrument flight procedures and the creation of a non-movement area, and
6. Local zoning issues.

C. Non-Aeronautical Activities

Grant Assurance #22, *Economic Nondiscrimination*, stipulates that airport sponsors will make their airports available for civil aviation activities on reasonable terms and without unjust discrimination. In exchange for federal aid, airport sponsors pledge to abide by the grant assurances, dedicate their airports exclusively to aviation, and seek FAA concurrence before permitting any non-aeronautical use.

Grant Assurance #19, *Operation and Maintenance*, requires sponsors to conduct safe, serviceable and unrestricted operations for airport purposes. Non-aeronautical uses of aviation facilities is not considered the highest and best use, simply because it was never the intended use of airport property. Federal aid to airports was originally granted to enhance the national airport system in the furtherance of civil aviation. The non-aeronautical use of aviation facilities is contrary to federal obligations, unless approved by the FAA. In view of federal obligations, it stands to reason that non-aeronautical uses should be prohibited, unless otherwise approved by the FAA.

D. Fee and Rental Structure

Grant Assurance #24, *Fee and Rental Structure*, indicates that the airport sponsor is obligated to establish a fee and rental structure that will generate sufficient airport revenue to make the airport self-sustaining, without reliance on local taxes or subsidies from the sponsor's general fund. In accordance with Assurance #24, airport property being used for non-aeronautical purposes must generate income for the airport, based on the property's fair market value (FMV). If an airport sponsor allows a tenant or subtenant to use leasehold property to conduct a non-aeronautical activity, and the sponsor does not impose a FMV rent on this activity, then two compliance issues arise. First, the airport sponsor is allowing airport facilities to be used for non-aeronautical purposes, and secondly, the sponsor is not collecting FMV rent for that use. In calculating FMV rent, a market analysis must be based on the charges that would apply to similar commercial uses elsewhere in the community, or in the case of Gillespie Field, the established commercial rate applied at the airport's industrial park.

Finally, when the FAA concurs with a non-aeronautical use of airport property, it is granted on the condition that the use is temporary, and will be terminated when the leased facilities are needed for aeronautical purposes. When there is an aeronautical need, non-aeronautical leasehold must revert to aeronautical uses. A tenant's desire to profit from non-aeronautical use of an airport leasehold cannot legitimately preempt the sponsor's obligation to use airport property for aeronautical purposes.

Pursuant to Assurance #24, the county should include appropriate rate provisions in lease agreements, so tenants are aware of the financial implications of conducting a non-aeronautical activity at the airport. Tenants should understand from the outset that any tenant proposal to introduce non-aeronautical activities must be approved by the county and found acceptable by the FAA. In addition, tenants should know that the rental rate for non-aeronautical activities will be based on FMV, and the rate may differ considerably from the rate applied to aeronautical activities. They should also understand that the FMV rate is mandated by the grant assurances.

When an airport sponsor disregards the obligation to obtain FMV rate of return for non-aeronautical uses of airport property, this may be viewed as revenue diversion, which is prohibited by Grant Assurance #25, *Airport Revenue*. When FMV is not charged for non-aeronautical activities, the tenant benefits from an undervalued property while the airport foregoes revenue that it would have otherwise earned, if the appropriate FMV rent had been charged.

E. Airport Revenue

With regard to the revenue use Grant Assurance #25, *Airport Revenue*, the regulatory implications of the County's use of airport revenue to finance part of the construction cost of the Marshal Avenue extension project is a significant concern. A loan of airport revenue, made available to the city of El Cajon, to partly finance the construction of the new roadway through SEE property needs to be reconciled. The requirements of Assurance #25 dictate that the loan must be repaid with interest, set at the prevailing interest rate at the time the loan was made. If the loan is not repaid with interest, then this use of airport revenue will represent a revenue diversion.

F. Airport Layout Plan (ALP)

Grant Assurance #29, *Airport Layout Plan*, requires that an ALP must be kept current and depict the location and nature of all existing and proposed airport facilities, any modifications, and the location of all existing and proposed non-aeronautical facilities.

In accordance with Assurance #29, the sponsor will not make or permit any changes or alterations to the airport or any of its facilities that are not in conformance with the FAA-approved ALP. Hangars with residential living quarters and non-aeronautical commercial activities would not be consistent with Assurance #29, if they were not reviewed and approved by the FAA.

In addition, all proposed development on airport property is subject to the airspace evaluation requirements of Title 14 Code of Federal Regulations (CFR) Part 77.

The airport sponsor should not authorize proposed tenant improvement projects until the sponsor is convinced that the project complies with Assurance #29, and all conditions of the FAA's airspace determination have been satisfied.

The County permitted the construction of the Marshal Avenue extension on obligated airport property. The roadway alignment isolated a parcel of aeronautical land, making it impractical for aviation use. The major roadway improvement was done without FAA review or approval, and was even subsidized with a loan using airport revenue. The benefit of the Marshal Avenue extension appears to have served other interests, rather than the airport.

G. Leasing Policy and Practices

FAA reviewed several airport tenant leases. Based on this review, several recommendations surfaced that should help the county improve management control of federally obligated airport property, so it is used in conformance with federal obligations.

1. Permitting a tenant's aeronautical activities, by a lease agreement, should be limited to only those aeronautical activities for which the tenant applies. The lessee must be professionally capable of offering and performing the aeronautical services, and be financially able to undertake that activity. Lease provisions should not permit the tenant to exercise new rights or change the terms of the lease easily, especially with regard to subleasing and non-aeronautical activities.
2. There should be a provision added to leases stipulating that all construction must comply with 14 CFR Part 77, and receive an official FAA airspace determination before construction begins.
3. Tenants, subtenants and their authorized guests must be subject to and comply with safety and security lease provisions that will minimize County liability.
4. Non-aeronautical uses should not be allowed in the airport's aviation-use areas. Lease provisions that address non-aeronautical uses of tenant facilities should be omitted from aeronautical leases. Since the FAA must evaluate all proposed non-aeronautical uses, it is not a realistic tenant-landlord lease option. The County should obtain an FAA determination before giving consideration to a request for non-aeronautical activity.
5. Residential facilities should be prohibited and a provision for living quarters, such as caretaker facilities, should not be included in any lease. A provision for pilot living quarters should be based on the FBO's needs.

6. Airport lease agreements should include the FAA-recommended lease provisions that make all lease provisions subordinate to federal obligations. Any provision that is subsequently found inconsistent with federal requirements can be deemed null, void, and unenforceable.

Title 49 United States Code (USC) 47131

Section 737 of AIR-21, *Land Use Compliance Report*, codified under 49 USC 47131, requires the FAA to submit a report to Congress listing airports that are not in compliance with grant assurances and land use requirements, including a description of the non-compliance circumstances, the timeline for the sponsor's corrective action, and the action the FAA intends to take to bring the airport sponsor into compliance.

Based on the foregoing issues stated above, it appears that the County has not conformed to either the spirit or letter of all federal airport obligations. Therefore, FAA is providing the County this opportunity to address the issues in accordance with USC 47131. FAA Headquarters has determined that SEE qualifies for inclusion in the FAA report to Congress.

Conclusion and Follow-Up

In order to assess the County's follow-up plan, the FAA requests, within 60 days of the County's receipt of this letter, that the County submit a written response explaining how the County intends to address the compliance issues stated above and listed in the topic summary below:

1. Dedicate the El Cajon Plaza (70-acre racetrack parcel) to aeronautical development.
2. Prohibit the construction or development of additional airport hangars with residential living quarters.
3. Prohibit unauthorized non-aeronautical use of federally obligated airport property.
4. Amend airport leasing policies and practices as recommended in item G above.
5. Adjust rents to FMV for non-aeronautical uses of obligated airport property by lease amendment.
6. Submit and obtain FAA approval of an updated SEE ALP.
7. Complete Runway Safety Action Plan (RSAP) items as soon as possible, as well as take appropriate action to prevent further runway incursions and vehicle/pedestrian deviations from occurring. (See enclosed RSAP)
8. Ensure airport management practices at the County's other airports comply with federal obligations and take action to bring them into compliance where departures from these obligations exist.

Documents Requested

FAA, under Grant Assurance #13.b, *Accounting System, Audit, and Record Keeping Requirements*, is herewith requesting the following County documentation:

1. A copy of the County's airport minimum standards.

2. A copy of the most recent financial statement for SEE and the County's airport system consolidated financial statement.
3. Financial documents and information concerning the repayment of the airport's construction loan for the Marshal Avenue improvements. Has the airport fund received any repayment to date? Do the payments include interest? If repayment has not been made, when will repayment begin? How many years will it take for the loan to be repaid in full?

If you need assistance, or further FAA guidance and clarification regarding any of these matters, please contact Mr. Anthony Garcia (310) 725-3634.

Sincerely,

A handwritten signature in cursive script that reads "Ellsworth L. Chan". The signature is written in dark ink and is positioned above the printed name and title.

Ellsworth L. Chan, P.E.

Manager, Safety and Standards Branch

Enclosure

Gillespie Airport Runway Safety Action Plan (RSAP) Update

September 25, 2003

Page 1 of 2

Item No.	Action Item	Status	Responsible Party	Status	Due Date
SEE-01-001	Need to properly locate and paint all Runway Holding Position Markings double sized, with reflective beads and black paint highlighting as required in Advisory Circular 150/5340-1H, Change 1.	Complete	San Diego County, Public Works, Aviation Division	Complete	09/30/2002
SEE-01-002	Need to properly locate and paint all Taxiway Holding Position Markings as required in Advisory Circular 150/5340-1H, Change 1, including reflective beads and black paint highlighting.	Complete	San Diego County, Public Works, Aviation Division	Complete	09/30/2002
SEE-01-003	Need to change Yellow on black panels on Taxiway Guidance Sign [27L] to black on yellow [27L] with black Dot separating it from sign [27R].	Complete	San Diego County, Public Works, Aviation Division	Complete	04/14/2001
SEE-01-004	Need to sand or water blast all Geographic Position Markers to remove them from taxiways.	Open	San Diego County, Public Works, Aviation Division	Open	01/30/2004
SEE-01-005	Suggest that markings be included in present or future AIP Projects to complete in a timely manner.	Complete	San Diego County, Public Works, Aviation Division, and FAA Airports -621	Complete	07/06/2003
SEE-01-006	Need to resolve the problem of the construction of new hangars, that create a line of sight visibility problem to Taxiway D for the FAA Air Traffic Control Tower, and are in violation of the conditions of the airspace approval.	Complete	San Diego County, Public Works, Aviation Division	Complete	10/01/2001

11/12/2003

Gillespie Airport Runway Safety Action Plan (RSAP) Update
September 25, 2003

Page 2 of 2

Action Item	Assignment/Recommendation	Status/Approval	Office of Responsibility	Status	Completion Date
SEE-03/001	Local RSAT (LRSAT) should develop control measures to mitigate the number of V/PDs that occur at SEE.				
SEE-03-002	SEE to develop and publish a Hot Spot Chart.	09/29/03: AWP-1R (Office of Runway Safety) provided a recommended Hot Spot Chart to SEE ATM for review and approval to be published on the AWP Runway Safety web site.	Air Traffic Manager	Open	12/30/2003
SEE-03-003	Suggest the installation of reflective warning signs in areas that are not visible from the control tower.		Air Traffic Manager	Open	12/30/2003
			San Diego County, Public Works, Aviation Division	Open	12/30/2003